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# Republican Policy Committee

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## **Senate Takes Up Embattled Foster Nomination for U.S. Surgeon General**

The Republican Leader has scheduled two cloture votes on the nomination of Dr. Henry Foster of Tennessee to be Surgeon General of the United States to take place at 12:00 noon today and at 2:00 p.m. tomorrow. Today's vote will be preceded by three hours of debate, equally divided, and tomorrow's vote by two hours. If cloture is not invoked, the nomination will be returned to the Senate calendar, and the Senate will return to legislative session.

Almost since President Clinton's February 2 announcement of Dr. Foster as his choice to succeed Dr. Joycelyn Elders, Dr. Foster's record and his credibility have been the center of controversy. His critics charge that a lack of honesty on Dr. Foster's part renders him unfit for the position sometimes referred to as "America's family doctor." The four major issues that have dogged the Foster nomination are:

- The number of abortions Dr. Foster has performed, and his conflicting statements to that effect;
- When Dr. Foster knew about a notorious U.S. Public Health Service study on the effects of untreated syphilis on black males conducted in Tuskegee, Alabama;
- The contested record of Dr. Foster's "I Have a Future" program in Nashville, Tennessee, with regard to its claimed success in keeping down teen pregnancy rates and whether it primarily focused on abstinence, as Dr. Foster claims; and
- Whether Dr. Foster's acknowledged practice of sterilizing mentally retarded women and girls beginning in the mid-1970s was inconsistent with accepted medical standards.

The balance of this paper summarizes the charges made against Dr. Foster by his critics with regard to these issues.

**Charge: Dr. Foster has made inconsistent statements regarding the number of abortions he has performed, indicating a lack of honesty about this sensitive subject.**

- Shortly after President Clinton announced Dr. Foster as his choice for Surgeon General, the White House informed Senator Kassebaum, who chairs the Committee on Labor and Human Resources, which has jurisdiction over the nomination, that he had performed **only one abortion** [*Washington Post*, "Foster Says He Performed Abortions," 2/4/95].
- On February 3, 1995, the Department of Health and Human Services released a statement by Dr. Foster, which stated: "I believe that I have performed **fewer than a dozen pregnancy terminations**" [Statement by Dr. Henry Foster, Nominee for U.S. Surgeon General].
- On November 10, 1978, Dr. Foster, as a member of the Department of Health, Education and Welfare's (H.E.W.) Ethics Advisory Board, is recorded in an official government transcript as saying, "**I have done a lot of amniocentesis and therapeutic abortions, probably near 700**" [H.E.W., Office of the Secretary, Ethics Advisory Board, Meeting V, Friday, November 10, 1978, Seattle, WA, p. 180]. The White House first claimed the transcript was not genuine but later admitted its authenticity. Dr. Foster initially claimed the transcript was inaccurate — that he did not make the statement nor did he do what is stated — but later said he did not remember making the statement.
- At about the same time, the November 1980 *ObGyn News* published a story regarding a study conducted on behalf of Upjohn Pharmaceuticals by Dr. Foster at Meharry Medical College in Nashville to develop an abortion pill based on the chemical prostaglandin. Dr. Foster has admitted that he was the research director of a clinical study in which **55 chemical abortions and four surgical abortions** were performed on women participating in the study.
- Appearing on ABC's "Nightline" program on February 8, 1995, Dr. Foster stated he was the physician of record in **39 abortions since 1973** (i.e., since the *Roe v. Wade* decision that legalized abortion nationwide). He stated that the number 39 did not include any of the 59 performed as part of the prostaglandin study noted above, since while he supervised the trial he did not personally perform those abortions.

**Charge: Dr. Foster learned, as early as 1969, about the notorious Tuskegee Syphilis Study, a decades-long study conducted by the U.S. Public Health Service on the effects of untreated syphilis on black men conducted in Macon County, Alabama. Not only did Dr. Foster, as vice president of the Macon County Medical Society, do nothing to see that the subjects received appropriate medical treatment but he has falsely stated he did not learn of the study until 1972, shortly before it was terminated.**

- As documented in the authoritative 1981 book *Bad Blood*, by James H. Jones, in 1932 the U.S. Public Health Service (PHS) initiated a long-term study in Macon County, Alabama, to study the effects of untreated syphilis on black males. The subjects of the study, numbering about 400, were not told they had syphilis, nor that they were part of an experiment; instead, they were told they had "bad blood" and were instructed to periodically visit local clinics so that, without their knowledge, health officials could monitor the progress of their usually fatal disease. The program, usually referred to as the Tuskegee Syphilis Study, was ended after its public exposure in 1972.
- On May 19, 1969, PHS briefed members of the Macon County Medical Society about the Tuskegee Study and asked for their cooperation. Members of the society reportedly were given a list of the surviving participants in the study. At the time Dr. Foster was the society's vice president.
- Dr. Foster claims he did not learn of the study until July 1972. He stated at his confirmation hearing that "if anyone in Tuskegee had known about it . . . I think the place would have gone ballistic. . . . No one knew about that study until 1972" [committee transcript, 5/2/95, p. 101]. July 1972 was "the first time I ever heard of the Tuskegee study in any kind of shape, form, or fashion. And I was outraged" [committee transcript, 5/3/95, pp. 142-143].
- Regarding the May 19, 1969, briefing of the society by the PHS, Dr. Foster states he has "no recollection of attending" that meeting, and that regarding the Tuskegee Study his "knowledge and memory go back to 1972" [*Washington Post*, 2/25/95]. However, Dr. L. C. McRae, who at the time was the medical society's president, stated in February of this year that he recalls that Dr. Foster was at the meeting. No surviving attendee of the May 19 meeting has stated that Dr. Foster was not present. No written minutes of the meeting have ever been located.

**Charge: Dr. Foster has stated that the "I Have a Future" program, with which he is closely associated, is evidence of his commitment to abstinence as the key to reducing teen pregnancy. However, not only has the program failed in its stated mission, but the claim of abstinence as a major component of the program is false.**

- In the February 3, 1995, statement issued by the Department of Health and Human Services, Dr. Foster said: "In my work with teenagers, abstinence has always been stressed as my first priority." The "I Have a Future" program (IHAF), conducted in Nashville, Tennessee, by Meharry Medical College, is frequently cited as an example.
- However, in two IHAF promotional brochures made available to the Committee on Labor and Human Services, abstinence is not even mentioned. Additional brochures promoting abstinence proved to have been written in December 1994 (i.e., after Dr. Elders announced that she was stepping down as Surgeon General) and ordered by IHAF in March 1995 (i.e., a month after Dr. Foster's appointment was announced by President Clinton). At his hearing Dr. Foster offered the explanation that the recently printed brochure was similar to earlier IHAF abstinence brochures; however, no such brochure has ever been located.
- Two evaluations of the IHAF program by IHAF staff, in February 1992 and November 1994, show that program participants finished the program **more sexually active** and with no lower pregnancy rate than a control group, i.e., local youth who had not participated in the program. This is true even though the IHAF youths had been less sexually active than the control group prior to starting the program.
- When questioned at his confirmation hearing before the Labor Committee about the February 1992 evaluation (the only one available to the committee at that time, May 2-3), Dr. Foster claimed it was not scientifically valid; he also stated that no other evaluation of the IHAF program existed. However, on May 10 the committee received the November 1994 evaluation, which coincided with the earlier study.

**Charge: Beginning in the mid-1970s, Dr. Foster began sterilizing mentally retarded women and girls in a manner inconsistent with accepted medical standards; despite protestations to the contrary, Dr. Foster knew or had reason to know that this practice was not in the mainstream of medical ethics.**

- In the summer of 1974, Dr. Foster read a paper to a medical association and said, "Recently, I have begun to use hysterectomy in patients with severe mental retardation."

- But by that summer, the law on sterilization in Alabama had shifted dramatically and practices that formerly were perhaps a part of the "medical mainstream" were no longer. The following developments are relevant:

— In 1972, a federal district court (in *Wyatt v. Stickney*) had placed Alabama's institutions for the mentally ill and mentally retarded under sweeping and detailed court orders forbidding experimental research and certain kinds of treatment without express and informed consent.

— In June of 1973, Mary Alice Relf, age 12, and Minnie Relf, age 14, were surgically sterilized in a hospital in Montgomery, Alabama. When the sterilizations came to light, there was an immediate public reaction that sparked a nationwide reform. By the end of June, there was a lawsuit. In July, the U.S. Department of Justice began a civil rights investigation, Senator Kennedy held a day of hearings, and the H.E.W. Secretary announced that regulations on the use of federal funds for sterilizations would be published within weeks, and they were.

— The H.E.W. regulations sought to protect the rights of all persons (including the mentally retarded) with respect to sterilizations paid for with federal funds. However, those regulations never took effect because a federal district court in Washington, D.C., in March of 1974 (in *Relf v. Weinberger*) found that H.E.W. had no authority to fund any nonconsensual sterilization whatsoever, no matter how many hurdles it erected.

- Also in the summer of 1973, the *Wyatt* plaintiffs filed a complaint that in December 1973, resulted in a federal court holding the Alabama sterilization statute unconstitutional (*Wyatt v. Aderholt*).
- On January 8, 1974, Federal District Judge Frank M. Johnson, Jr. issued an order that specified with particularity the procedures that would have to be followed in Alabama before an institutionalized mentally handicapped person could be sterilized. The judge required any sterilization to be approved by the director of the institution, a review committee, *and* the court — and the procedure had to have been determined to be in the **best interest of the resident** (also, *Wyatt v. Aderholt*).
- Yet, in the summer of that same year, **months after** *Wyatt* and *Relf* had been decided and the law in Alabama had been rechanneled, Dr. Foster read a paper saying he had "recently begun to use hysterectomy in patients with severe mental retardation."

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